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Message Text

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73
ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 L-03 AID-05 CEA-01 CIAE-00

COME-00 EA-07 FRB-03 INR-07 IO-10 NEA-10 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

DODE-00 DOTE-00 FMC-01 CG-00 OFA-01 DLOS-04 SS-15

NSC-05 SSO-00 NSCE-00 USIE-00 INRE-00 /104 R

DRAFTED BY EB/TT/MA:JPSTEINMETZ/L/AF:FKWILLIS:EW
APPROVED BY EB/TT/MA:RKBANK
EUR/RPE:WCLARK
EUR/NE:MR; SCHALLER(PARA 5,SUBS)
TREAS: JLANGE
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O 142121Z OCT 75
FM SECSTATE WASHDC
TO USMISSION OECD PARIS IMMEDIATE

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E.O. 11652: N/A

TAGS:EWWT, EFIN, ECON, UNCTAD, OECD

SUBJECT: OECD EXECUTIVE COMMITTEE DISCUSSION ON U.S. LINER CODE

REF: OECD PARIS 26207

1. PROPOSED TEXT FOR NEW VERSION PARA (II) CONTAINED PARA 4, REFTEL, IS NOT ACCEPTABLE IN PRESENT FORM. AS PRESENTLY FORMULATED, IT IS INTERNALLY INCONSISTENT OR CIRCULAR AT BEST -- IT PURPORTS NOT TO PREJUDGE THE COMPATIBILITY OF THE TWO CODES IN THE INTRODUCTORY CLAUSE, AND THEN PROCEEDS TO PRESUPPOSE THAT MEMBERS CAN BECOME
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PARTIES TO THE CODE OF CONDUCT IN A MANNER NOT IN CON-

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FLICT WITH OECD CODE OBLIGATIONS, THUS PREJUDGING THE ISSUE. AT BEST, WE GAIN NOTHING FROM SUCH PHRASEOLOGY, MORE LIKELY, BY ACCEPTING IT, IT BECOMES A PLATFORM FOR THOSE MEMBERS WHO ARGUE THEY CAN BECOME PARTY TO BOTH WITHOUT CONFLICT. U.S POSITION FROM BEGINNING HAS BEEN AND REMAINS THAT THE TWO CODES ARE INHERENTLY INCOMPATIBLE. SUGGESTED REDRAFT IN OUR VIEW CAN ONLY SERVE TO UNDERCUT THIS POSITION.

2. IN ORDER TO CLARIFY DEPT. OBJECTIONS, FOLLOWING COMMENT ON MISSION COMMENT (PARA 7, REFTEL) IS PROVIDED: WE

AGREE WITH MISSION VIEW THAT PROPOSED PARA (II) AVOIDS IMPLICIT ENDORSEMENT OF SIGNING UN CONVENTION. HOWEVER, AS WE SEE IT, THE PROBLEM IS NOT ONE OF ENDORSEMENT, BUT OF ACCEPTANCE OR ACQUIESCENCE. PROPOSED PARA (II) SEEMS TO US RATHER CLEARLY TO IMPLY ACCEPTANCE OR ACQUIESCENCE IN SUCH ACTION, A RESULT WHICH MUST DISTINCTLY BE AVOIDED. U.S. DOES NOT AGREE THAT STATES MAY SIGN AND RATIFY UN CODE AND AT SAME TIME MAINTAIN OBLIGATION UNDER INVISIBLES CODE.

3. WE WOULD PREFER NO PARAGRAPH (II) WHATSOEVER. HOWEVER, TAKING INTO CONSIDERATION MISSION'S CONCERN RE THE NEED TO REACH SOME SORT OF ACCOMMODATION IF ONLY TO AVOID ISOLATION OF THE US, WE PROPOSE FOLLOWING NEW WORDING FOR PARA (II):

BEGIN TEXT

NOTED THAT WHILE IT HAS NOT BEEN AGREED WHETHER THERE IS COMPATIBILITY OR INCOMPATIBILITY BETWEEN THE TWO INSTRUMENTS, MEMBER COUNTRIES REAFFIRM THAT AT ALL TIMES THEY WILL OBSERVE THEIR OBLIGATIONS UNDER THE OECD CODE OF LIBERALIZATION OF CURRENT INVISIBLES.

END TEXT.

THIS PHRASEOLOGY IS NOT ONLY SUFFICIENT NEUTRAL, BUT ALSO LIMITED OFFICIAL USE

A POSITIVE DECLARATION. WE CONSIDER IT MUCH MORE PRACTICABLE UNDER THE CIRCUMSTANCES THAN THE EQUIVOCAL LANGUAGE DESIRED BY OTHER ANTI-CODERS.

4. AS FINAL FALL BACK, WE COULD VERY RELUCTANTLY RPT RELUCTANTLY LIVE WITH THE FOLLOWING:

BEGIN TEXT

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NOTED THAT, WITHOUT PREJUDGING WHETHER THERE IS COMPATI-
BILITY OR INCOMPATIBILITY BETWEEN THE TWO INSTRUMENTS,
MEMBER COUNTRIES AT ALL TIMES WILL OBSERVE THEIR OBLIGA-
TIONS UNDER THE OECD CODE OF LIBERALIZATION OF CURRENT
INVISIBLES.

END TEXT.

WE FEEL WE CANNOT GO ANY FURTHER THAN THIS LANGUAGE, AS
IT ALONE REPRESENTS A SIZABLE CONCESSION TO PRO-CODERS
VIEW WITH THE OUTRIGHT STATEMENT THAT COUNCIL
IS NOT PREJUDGING WHETHER THE TWO INSTRUMENTS ARE
INCOMPATIBLE. USE OF WORD QUOTE PREJUDGING UNQUOTE

IMPLIES OTHER STEPS BY GOVERNMENTS MIGHT BE TAKEN
INCLUDING, OF COURSE, BECOMING PARTY TO THE UN CODE. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, MARINE TRANSPORTATION, AGREEMENT DRAFT, COMMITTEE MEETINGS, RESOLUTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 OCT 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE243910
Document Source: CORE
Document Unique ID: 00
Drafter: JPSTEINMETZ/L/AF:FKWILLIS:EW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750356-0361
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751058/aaaabzty.tel
Line Count: 132
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 OECD PARIS 26207
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 23 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 MAY 2003 by CunninFX>; APPROVED <06 OCT 2003 by CunninFX>
Review Markings:

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US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: OECD EXECUTIVE COMMITTEE DISCUSSION ON U.S. LINER CODE
TAGS: EWWT, EFIN, ECON, UNCTAD, OECD
To: OECD PARIS
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006